IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION No.136 OF 2006

Sanjivani Remedies Limited, a Company incorporated Under the provisions of Companies Act, 1956 having its registered office at C-3, F.P. No.12, Bajaj Garden, Pune in the State of Maharashtra.) PETITION

Mr. Hemant Sethi for the petitioner.

CORAM : S.C. DHARMADHIKARI, J.
DATE : MARCH 18, 2006.

P.C. :

1. Heard Mr. Sethi appearing for the petitioner. He states that from the averments in the petition and more particularly, paragraphs 6 to 9 thereof, the requirement of complying with Section 101(2) does not arise in the facts and circumstances of this case. In addition, he submits that a learned Single Judge of this Court (S.U. Kamdar, J.) in Company Application No. 31 of 2005 decided on 10th February, 2005, has taken a view that the words "any other case" appearing in the aforesaid sub-section take their colour and context from the earlier words appearing therein and once there is no diminution of

liability or payment to any shareholder or any paid up share capital, then there is no need to comply with the above sub-section.

2. In my view, in the facts and circumstances of this case and in the light of the averments of the petition as well as the text of the resolution reproduced in the petition, as also perusal of the affidavit of Director of petitioner the above mentioned requirement can be dispensed with.

3. I am not expressing my opinion on the issue as to whether the words referred to above take their colour from the earlier portion of Section 101(2) in the facts and circumstances of the present case. That issue can be examined later.

4. In my view, it is the duty of evey officer of the company who has approached this Court seeking its sanction to the reduction of the share capital to disclose on oath that there is no creditor whose name has been concealed and who is entitled to object to the reuction, that there is no misrepresentation

about the debt or claim of any creditor or that no official or officer affirming petition has abeted or is privy to any concealment or misrepresentation. Mr. Sethi, upon instructions states that the disclosure in this petition takes care of all these aspects and further requirement of the Acts would be complied with, namely, registration of order and minutes of reuction. It comes to the notice of either this Court or any other appropriate authority, that there is misrepresentation or concealment then this Court can take suo motu action, apart from directing that criminal prceedings to be initiated. It can also initiate proceedings for deliberately making a false statement or misleading this Court and thereby obstructing the Courts of justice.

5. In the light of the above statements and the submissions of Mr. Sethi, this Company petition is granted in terms of prayer Cl. (a) and (b).

(S.C. DHARMADHIKARI,J.)